

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

GEORGE E. BARTON,

Plaintiff,

v.

GAYLOR WALKER, et al.,

Defendants.

No. CV-09-281-FVS

ORDER DISMISSING
COMPLAINT

PLAINTIFF GEORGE E. BARTON has obtained permission to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. Consequently, the Court must determine whether it has jurisdiction over the claim that is set forth in his complaint. 28 U.S.C. § 1915(e)(2)(B). *Cf. Snell v. Cleveland, Inc.*, 316 F.3d 822, 826 (9th Cir.2002) ("a court may raise the question of subject matter jurisdiction, sua sponte, at any time during the pendency of the action").

BACKGROUND

George Barton has filed a pro se diversity action against two citizens of the State of Oregon. 28 U.S.C. § 1332. He alleges they entered the State of Washington during August of 1998 and unlawfully took a trailer he had purchased for the sum of \$4,000. Thereafter, says Mr. Barton, they returned to Oregon with his trailer. He alleges he did not discover their role in the theft until 2007. According to Mr. Barton, the defendants committed the tort of conversion. He seeks

1 economic damages in excess of \$227,120.00 and punitive damages in an
2 amount to be proved at trial.

3 STANDARD

4 Mr. Burton must demonstrate the amount in controversy in this
5 action exceeds the sum of \$75,000. 28 U.S.C. § 1332(a). In order to
6 determine whether he has satisfied the jurisdictional minimum, the
7 Court examines the face of his complaint. *Pachinger v. MGM Grand*
8 *Hotel-Las Vegas, Inc.*, 802 F.2d 362, 363 (9th Cir.1986). The Court
9 may not dismiss his complaint for failure to satisfy the amount in
10 controversy unless it appears to "a legal certainty" his claim is, in
11 fact, a claim for less than the jurisdictional minimum. *Id.* at 364.
12 Legal certainty exists when, for example, "a specific rule of law or
13 measure of damages limits the amount of damages recoverable." *Id.*
14 (internal punctuation and citation omitted).

16 RULING

17 Mr. Barton's conversion claim is governed by the law of the State
18 of Washington. See *Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S.
19 487, 496, 61 S.Ct. 1020, 1021-22, 85 L.Ed. 1477 (1941). In
20 Washington, "[c]onversion is the unjustified, willful interference
21 with a chattel which deprives a person entitled to the property of
22 possession." *Meyers Way Dev. Ltd. Partnership v. Univ. Savings Bank*,
23 80 Wn. App. 655, 674-75, 910 P.2d 1308 (1996). The measure of damages
24 depends upon whether the conversion was unintentional or willful.
25 *Glaspey v. Prelusky*, 36 Wn.2d 592, 595, 219 P.2d 585 (1950); *Brougham*
26 *v. Swarva*, 34 Wn. App. 68, 76, 661 P.2d 138 (1983). Mr. Barton

1 appears to be alleging a willful conversion. In such cases, "the
2 measure of damages is the highest market value of the property within
3 a reasonable time after the conversion, or, as sometimes stated, the
4 highest price shown between the time of the conversion and the
5 institution of the suit." *Glaspey*, 36 Wn.2d at 595. Given the
6 measure of damages for a conversion claim, Mr. Barton cannot recover
7 rental income (he seeks \$129,120) or loss of use of the trailer (he
8 seeks \$100,000). Which reduces his alleged economic damages to less
9 than \$10,000; far below the jurisdictional minimum. It is true he
10 seeks punitive damages in an unspecified amount. However, his request
11 for punitive damages is governed by the law of the State of
12 Washington, see *Klaxon Co.*, 313 U.S. at 496, 61 S.Ct. at 1021-22, and,
13 under Washington law, he may not recover punitive damages. *Dailey v.*
14 *N. Coast Life Ins. Co.*, 129 Wn.2d 572, 574-75, 919 P.2d 589 (1996).
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16 The Court has carefully considered whether to afford Mr. Barton
17 an opportunity to amend his complaint. Having done so, the Court
18 concludes it would be futile to do so. Given the value of the
19 trailer, and given the measure of damages adopted by the Washington
20 Supreme Court for the tort of conversion, Mr. Barton cannot plead a
21 set of facts that would satisfy the jurisdictional minimum. As a
22 result, there is no reason to prolong the life of this action.

23 **IT IS HEREBY ORDERED:**

24 1. Mr. Barton's complaint is dismissed because the Court lacks
25 jurisdiction over his conversion claim.

26 2. The Court will not entertain a motion for reconsideration.

1 **IT IS SO ORDERED.** The District Court Executive is hereby
2 directed to file this order, enter judgment accordingly, furnish a
3 copy to Mr. Barton, and close the case.

4 **DATED** this 18th day of September, 2009.

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6 s/ Fred Sickle
7 Fred Van Sickle
8 Senior United States District Judge
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